

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. CROIX

**WALEED HAMED**, as the Executor of the Estate  
of MOHAMMAD HAMED,

*Plaintiff/Counterclaim Defendant,*

vs.

**FATHI YUSUF** and **UNITED CORPORATION**

*Defendants/Counterclaimants.*

vs.

**WALEED HAMED, WAHEED HAMED, MUFEEED  
HAMED, HISHAM HAMED, and PLESSEN  
ENTERPRISES, INC.,**

*Counterclaim Defendants,*

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**WALEED HAMED**, as the Executor of the Estate  
of MOHAMMAD HAMED, *Plaintiff,*

vs.

**UNITED CORPORATION,** *Defendant.*

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**WALEED HAMED**, as the Executor of the Estate  
of MOHAMMAD HAMED, *Plaintiff*

vs.

**FATHI YUSUF,** *Defendant.*

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**KAC357 Inc.,** *Plaintiff,*

vs.

**HAMED/YUSUF PARTNERSHIP,**

*Defendant.*

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**FATHI YUSUF,** *Plaintiff,*

vs.

**ESTATE OF MOHAMMAD A. HAMED,**

*Defendant.*

**Case No.: SX-2012-CV-370**

**ACTION FOR DAMAGES,  
INJUNCTIVE RELIEF AND  
DECLARATORY RELIEF**

**JURY TRIAL DEMANDED**

Consolidated with

**Case No.: SX-2014-CV-287**

Consolidated with

**Case No.: SX-2014-CV-278**

Consolidated with

**Case No.: ST-18-CV-219**

Consolidated with

**Case No.: ST-17-CV-384**

**HAMED'S SUPPLEMENTAL BRIEFING REGARDING YUSUF'S CLAIM Y-8  
AS TO THE APPLICABLE STATUTE OF LIMITATIONS**

As the Master noted in his Order date September 4, 2020, United is a third party making a claim against the Partnership based on an oral contract. Thus, it is subject to the regular statute of limitations that would apply to any party bringing such a claim.

United's instant claim does not fall within the scope of the Limitations Order.<sup>63</sup> However, the statute of limitations applies to Yusuf Claim No. Y-8 regardless of whether it falls within the scope of the Limitations Order.

Order at 21. At page 22 the Master correctly notes:

Hamed argued that Yusuf Claim No. Y-8 is time-barred. While Hamed stated the applicable statute of limitations, Hamed never stated how the applicable statute of limitations starts to accrue.

This is correct, and Hamed apologizes. the correct date is September 30, 2010—six years prior to the first ever assertion (or even mention) of such a claim. Indeed, there is no dispute, as stated by the Master, that this claim was first made on September 30, 2016.<sup>1</sup> It is never mentioned, asserted, raised prior to that, nor was it ever mentioned in any writing, communication or claim. It arrives, full born on September 30, 2016.

In 2016, per the Master's order, Parties filed their respective accounting claims. Yusuf's accounting claims, filed on September 30, 2016 (hereinafter "Yusuf's Accounting Claims"), included United's claim for water sales revenue collected by the Partnership from April 1, 2004 through February 28, 2015.

*Id.* at 2. Thus, as the Master states at 21, the applicable limitations period would be the six year period in 5 V.I.C. § 31(3)(A) for contract actions

(3) *Six years* —

(A) An action upon a contract or liability, express or implied, excepting those mentioned in paragraph (1)(C) of this section.

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<sup>1</sup> Nor does tolling apply as this claim could have been included in the answer and counterclaim or at any time thereafter—as United has filed many supplemental claims, motions and arguments in this case. Nor was United in any way impaired from September 30, 2010 until those filings in 2012 and thereafter.

Moreover, this claim was not a “mutual, open or current account”, as Hamed first learned about this claim when it was filed, so that 5 V.I.C. §33 does not apply.<sup>2</sup> However, if that section were applicable, the last item claimed took place well after 2010.

Finally, while there is no allegation that subsequent promises were made to pay this debt after the last date the alleged claims accrued, it must be noted that such promises would have to be in writing, as expressly required by 5 V.I.C. §39 that states:

No acknowledgment or promise shall be sufficient evidence of a new or continuing contract, whereby to take the case out of the operation of [the statute of limitations], unless the same is contained in some writing, signed by the party to be charged thereby.

*See, e. g. Anderson v. Bryan*, No. ST-08-CV-545, 2010 WL 10930917, at \*5 (V.I. Super. Dec. 6, 2010)(oral promises acknowledging a contract are not enforceable pursuant to 5 V.I.C. §39).

Thus, under the applicable statute, the regular six year limitations period would cut off any claims prior to September 30, 2010—six years prior to the first ever mention or assertion of such a claim. As such, this claim is time barred.

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<sup>2</sup> That section states:

In an action to recover a balance due upon a mutual, open, and current account, where there have been reciprocal demands between the parties, the cause of action shall be deemed to have accrued from the date of the last item proved in the account on either side; but whenever a period of more than one year shall elapse between any of a series of items or demands, they are not to be deemed such an account.

**Dated:** September 16, 2020



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## CERTIFICATE OF SERVICE

I hereby certify that on this 16<sup>th</sup> day of September, 2020, I served a copy of the foregoing by email, as agreed by the parties, on:

**Hon. Edgar Ross** (*w/ 2 paper copies to his Clerk*)  
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